

Dated: February 27, 2006.

Joseph T. Rannazzisi,

*Deputy Assistant Administrator, Office of
Diversion Control.*

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596-AC43

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is revising the transition language contained in the 2005 planning rule (70 FR 1023). This final rule modifies the transition language to allow the Tongass National Forest to revise its land management plan either under the 2005 Rule or the planning regulations in effect before November 9, 2000. The preamble of this rule includes a discussion of the public comments received on the proposed rule published January 4, 2006 (71 FR 307), and the Department's responses to the comments.

EFFECTIVE DATE: This rule is effective March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Cherie Shelley, Director, Ecosystem Planning, Alaska Region, Forest Service, USDA at (907) 586-8887; or Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA at (202) 205-1019.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2005, the Department of Agriculture published a final planning rule (70 FR 1023) governing the development of land management plans required by the National Forest Management Act. The 2005 planning regulations provide for a transition period from the previous planning regulations (1982 planning rule) to the new regulations (2005 planning rule). Specifically, § 219.14 of the 2005 planning rule allows plans to be amended under either the 1982 planning rule or the 2005 planning rule during the transition period; however, newly initiated revisions may only use the 2005 planning rule.

On August 5, 2005, the Ninth Circuit Court of Appeals issued a decision in *Natural Resources Defense Council v.*

U.S. Forest Service, 421 F.3d 797, that found defects in the 1997 Final EIS and Record of Decision for the Tongass Land Management Plan. The court's analysis of the 1997 forest plan was made in the context of the 1982 planning regulations. Thus, the agency wishes to have the option of using the 1982 planning regulations during the remand. For this unique situation, this final rule amends 36 CFR 219.14(d)(1) to allow the Tongass National Forest land management plan to be revised using either the 1982 planning rule or the 2005 planning rule.

Summary of Public Comments and the Department's Responses

The proposed rule was published in the **Federal Register** on January 4, 2006, for a 30-day public comment period (71 FR 307). The Forest Service received eight comments on the proposed rule, one from an individual, one from an Alaska Native tribe, and six from environmental organizations. All comments were considered in reaching a decision on the final rule. All comments received supported the proposed rule and encouraged the Forest Service to use the 1982 planning rule instead of the 2005 planning rule in revising the Tongass Land Management Plan to respond to the decision of the Ninth Circuit. The Department appreciates the support for the proposed rule and the flexibility it will provide. The Forest Service will decide to use either the 1982 or 2005 planning rule in revising the Tongass Land Management Plan, and will take the comments received on the proposed rule into account in making that decision.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to Office of Management and Budget review under Executive Order 12866.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule makes a technical change to the transition language of the 2005 planning rule, to allow the Tongass National Forest to use either the current planning regulations or the regulations in effect before November 9, 2000, for its next land management plan revision. An initial small entities flexibility assessment has been made, which indicates that the final rule will impose no additional requirements on the affected public, which includes small businesses, small not-for-profit organizations, or small units of government. Accordingly, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

No Environmental Impact

This final rule allows the Tongass National Forest to use either the existing planning regulations or the planning regulations in effect before November 9, 2000, for the next revision of its land management plan to respond to the court's order. As such, the final rule has no direct and immediate effects regarding the occupancy and actual use of the Tongass National Forest. Section 31.12 (2) of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." The 2005 planning regulations are a Service-wide program process. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this final rule allows the Tongass National Forest to use either the regulations currently in

place or the planning regulations in effect before November 9, 2000, for the next revision of its land management plan to respond to the court's order.

This plan is a programmatic document that provides guidance and information for future project-level resource management decisions. The revised plan may designate major rights-of-way corridors for utility transmission lines, pipelines, and water canals. The effects of such designations on energy supply, distribution, or use will be considered at the time such designations are proposed.

Controlling Paperwork Burdens on the Public

This final rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism. The Department has made an assessment that the rule conforms with the Federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Department concludes that the final rule does not have Federalism implications.

Consultation With Tribal Governments

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of private property. This final rule only allows the Tongass National Forest to use either the existing planning regulations or the regulations

in effect before November 9, 2000, for its next plan revision.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. After adoption of this final rule: (1) All State and local laws or regulations that conflict with this rule or that would impede full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) the final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, the Department of Agriculture amends subpart A of part 219 of title 36 of the Code of Federal Regulations as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

■ 1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

■ 2. Amend § 219.14 by revising paragraph (d)(1) to read as follows:

§ 219.14 Effective dates and transition.

* * * * *

(d)(1) Plan development and plan revisions initiated after January 5, 2005 must conform to the requirements of

this subpart, except that the plan for the Tongass National Forest may be revised once under this subpart or the planning regulations in effect before November 9, 2000.

* * * * *

Dated: February 22, 2006.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–VA–0014; FRL–8039–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Documents Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions consist of revised citations, editions, and corrected addresses to documents which are incorporated by reference in Virginia's SIP-approved regulations. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on May 2, 2006 without further notice, unless EPA receives adverse written comment by April 3, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–VA–0014 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: frankford.harold@epa.gov.

C. Mail: EPA–R03–OAR–2005–VA–0014, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.